



February 20, 2004

ENGROSSED SENATE BILL No. 46

DIGEST OF SB 46 (Updated February 17, 2004 2:07 pm - DI 107)

Citations Affected: IC 9-24; IC 9-25; IC 10-16; IC 12-17; IC 29-3; IC 31-9; IC 31-12; IC 31-14; IC 31-15; IC 31-16; IC 31-17; IC 31-18; IC 31-35; IC 34-7; IC 34-26; IC 35-42.

Synopsis: Parenting time. Replaces references to "visitation" with "parenting time" in parental custody statutes. Provides that a prosecuting attorney or private attorney in a Title IV-D case is not required to litigate a matter relating to parenting time or parenting time credit. (The introduced version of this bill was prepared by the child custody and support advisory committee.)

Effective: July 1, 2004.

Ford, Breaux

(HOUSE SPONSORS — SUMMERS, DUNCAN)

November 21, 2003, read first time and referred to Committee on Judiciary.
January 8, 2004, amended, reported favorably — Do Pass.
January 12, 2004, read second time, ordered engrossed. Engrossed.
January 13, 2004, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Judiciary.
February 19, 2004, amended, reported — Do Pass.

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ES 46—LS 6109/DI 107+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 46

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-24-15-6.7, AS AMENDED BY P.L.117-2001,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 6.7. (a) If a petitioner whose driving license or
4 permit is suspended under IC 9-25-6-19, IC 9-25-6-20, or IC 9-25-6-21
5 proves to the satisfaction of the court that public transportation is
6 unavailable for travel by the petitioner:

7 (1) to and from the petitioner's regular place of employment;

8 (2) in the course of the petitioner's regular employment;

9 (3) to and from the petitioner's place of worship; or

10 (4) to participate in ~~visitation~~ **parenting time** with the petitioner's
11 children consistent with a court order granting ~~visitation~~;
12 **parenting time**;

13 the court may grant a petition for a restricted driving permit filed under
14 this chapter.

15 (b) A restricted driving permit issued by the bureau under this
16 section must specify that the restricted driving permit is valid only for
17 purposes of driving under the conditions described in subsection (a).

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(c) A restricted driving permit issued by the bureau under this section shall be:

- (1) issued in the same manner; and
 - (2) subject to all requirements;
- as other permits under this chapter.

SECTION 2. IC 9-25-6-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) The bureau shall, upon receiving an order of a court issued under IC 31-14-12-4 or IC 31-16-12-7 (or IC 31-1-11.5-13(j) or IC 31-6-6.1-16(j) before their repeal), suspend the driving license or permit of the person who is the subject of the order.

(b) The bureau may not reinstate a driving license or permit suspended under this section until the bureau receives an order allowing reinstatement from the court that issued the order for suspension.

(c) Upon receiving an order for suspension under subsection (a), the bureau shall promptly mail a notice to the last known address of the person who is the subject of the order, stating the following:

(1) That the person's driving privileges are suspended, beginning five (5) business days after the date the notice is mailed, and that the suspension will terminate ten (10) business days after the bureau receives an order allowing reinstatement from the court that issued the suspension order.

(2) That the person has the right to petition for reinstatement of driving privileges to the court that issued the order for suspension.

(3) That the person may be granted a restricted driving permit under IC 9-24-15-6.7 if the person can prove that public transportation is unavailable for travel by the person:

- (A) to and from the person's regular place of employment;
- (B) in the course of the person's regular employment;
- (C) to and from the person's place of worship; or
- (D) to participate in ~~visitation~~ **parenting time** with the petitioner's children consistent with a court order granting ~~visitation~~ **parenting time**.

(d) Unless a person whose driving license or permit is suspended under this section has been issued a restricted driving permit under IC 9-24-15 as a result of a suspension under this section, a person who operates a motor vehicle in violation of the section commits a Class A infraction.

SECTION 3. IC 9-25-6-20, AS AMENDED BY P.L.86-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. (a) If the bureau is advised by the Title IV-D

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agency that the obligor (as defined in IC 12-17-2-2.5) either requested a hearing under IC 12-17-2-35 and failed to appear or appeared and was found to be delinquent, the bureau shall promptly mail a notice to the obligor stating the following:

(1) That the obligor's driving privileges are suspended, beginning twenty (20) business days after the date the notice is mailed, and that the suspension will terminate after the bureau receives a notice from the Title IV-D agency that the obligor has:

(A) paid the obligor's child support arrearage in full; or

(B) established a payment plan with the Title IV-D agency to pay the arrearage and requested the activation of an income withholding order under IC 31-16-15-2.

(2) Explains that the obligor may be granted a restricted driving permit under IC 9-24-15-6.7 if the obligor can prove that public transportation is unavailable for travel by the obligor:

(A) to and from the obligor's regular place of employment;

(B) in the course of the obligor's regular employment;

(C) to and from the obligor's place of worship; or

(D) to participate in ~~visitation~~ **parenting time** with the petitioner's children consistent with a court order granting ~~visitation~~ **parenting time**.

(b) The bureau may not reinstate a driving license or permit suspended under this section until the bureau receives a notice from the Title IV-D agency that the obligor has:

(1) paid the obligor's child support arrearage in full; or

(2) established a payment plan with the Title IV-D agency to pay the arrearage and requested the activation of an income withholding order under IC 31-16-15-2.

(c) Unless an obligor whose driving license or permit is suspended under this section has been issued a restricted driving permit under IC 9-24-15 as a result of a suspension under this section, an obligor who operates a motor vehicle in violation of the section commits a Class A infraction.

SECTION 4. IC 10-16-7-22, AS ADDED BY P.L.2-2003, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. If a member of the Indiana national guard or a member of a reserve component of the armed forces of the United States:

(1) is a noncustodial parent (as defined in IC 31-9-2-83);

(2) misses ~~visitation~~ **parenting time** as provided in an order issued under IC 31-14-14 or IC 31-17-4 due to participating in an activity required under this chapter; and

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(3) notifies the custodial parent at least seven (7) days before the member misses the anticipated ~~visitation~~ **parenting time** described in subdivision (2), unless the member is unable to provide notice due to a government emergency;

the member shall be allowed to make up the lost ~~visitation~~ **parenting time** at the member's earliest convenience but not later than one (1) month after the member misses the ~~visitation~~ **parenting time** under this section, if exercising the lost ~~visitation~~ **parenting time** does not conflict with the child's school schedule.

SECTION 5. IC 12-17-2-18, AS AMENDED BY P.L.138-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) The bureau shall make the agreements necessary for the effective administration of the plan with local governmental officials within Indiana. The bureau shall contract with:

(1) a prosecuting attorney; or

(2) a private attorney if the bureau determines that a reasonable contract cannot be entered into with a prosecuting attorney and the determination is approved by at least two-thirds (2/3) of the Indiana child custody and support advisory committee (established under IC 33-2.1-10-1);

in each judicial circuit to undertake activities required to be performed under Title IV-D of the federal Social Security Act (42 U.S.C. 651), including establishment of paternity, establishment, enforcement, and modification of child support orders, activities under the Uniform Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the contract is with a prosecuting attorney, prosecutions of welfare fraud.

(b) The hiring of an attorney by an agreement or a contract made under this section is not subject to the approval of the attorney general under IC 4-6-5-3. An agreement or a contract made under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

(c) Subject to section 18.5 of this chapter, a prosecuting attorney with which the bureau contracts under subsection (a) may contract with a private organization to provide child support enforcement services.

(d) A prosecuting attorney or private attorney entering into an agreement or a contract with the bureau under this section enters into an attorney-client relationship with the state to represent the interests of the state in the effective administration of the plan and not the interests of any other person. An attorney-client relationship is not created with any other person by reason of an agreement or contract with the bureau.

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(e) At the time that an application for child support services is made, the applicant must be informed that:

- (1) an attorney who provides services for the child support bureau is the attorney for the state and is not providing legal representation to the applicant; and
- (2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the privilege provided under IC 34-46-3-1.

(f) A prosecuting attorney or private attorney who contracts or agrees under this section to undertake activities required to be performed under Title IV-D is not required to mediate, resolve, or litigate a matter relating to parenting time or parenting time credit.

SECTION 6. IC 12-17-2-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 35. (a) An obligor may contest the Title IV-D agency's determination to issue an order under section 34 of this chapter by making a written application to the Title IV-D agency within twenty (20) days after the date that notice is mailed to the obligor.

(b) The only basis for contesting an order issued under this section is a mistake of fact.

(c) The Title IV-D agency shall hold a hearing, within twenty-five (25) days after written application is made under subsection (a), to review its determination to issue an order under section 34 of this chapter. The Title IV-D agency shall make a determination in writing on the issuance of an order under section 34 of this chapter at the hearing.

(d) At the hearing described in subsection (c), if the obligor whose driving license or permit is suspended under this chapter proves to the satisfaction of the Title IV-D agency that public transportation is unavailable for travel by the obligor:

- (1) to and from the obligor's regular place of employment;
- (2) in the course of the obligor's regular employment;
- (3) to and from the obligor's place of worship; or
- (4) to participate in ~~visitation~~ **parenting time** with the obligor's children consistent with a court order granting ~~visitation~~ **parenting time**;

the Title IV-D agency may order the bureau of motor vehicles to issue the obligor a restricted driving permit.

(e) If the obligor requests a hearing but fails to appear or if the obligor appears and is found to be delinquent, the Title IV-D agency

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shall issue an order to the bureau of motor vehicles stating that the obligor is delinquent.

(f) An order issued under subsection (e) must require the following:

(1) If the obligor who is the subject of the order holds a driving license or permit on the date the order is issued, that the obligor's driving privileges be suspended under further order of the Title IV-D agency.

(2) If the obligor who is the subject of the order does not hold a driving license or permit on the date the order is issued, that the bureau of motor vehicles may not issue a driving license or permit to the obligor until the bureau of motor vehicles receives a further order from the Title IV-D agency.

(g) A restricted driving permit issued by the bureau of motor vehicles under this section must specify that the restricted driving permit is valid only for purposes of driving under the conditions described in subsection (d).

(h) Unless a person whose driving license or permit is suspended under this chapter has been issued a restricted driving permit under this section as a result of a suspension under this chapter, a person who operates a motor vehicle in violation of this section commits a Class A infraction.

SECTION 7. IC 29-3-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) The surviving parent of a minor does not have the right to custody of the minor without a proceeding authorized by law if the parent was not granted custody of the minor in a dissolution of marriage decree and the conditions specified in this section exist.

(b) If:

(1) the surviving parent, at the time of the custodial parent's death, had required supervision during ~~visiting~~ **parenting time** privileges granted under a dissolution of marriage decree involving the minor; or

(2) the surviving parent's ~~visiting~~ **parenting time** privileges with the minor had been suspended at the time of the death of the custodial parent;

the court on petition by any person, including a temporary custodian named under IC 31-17-2-11 (or IC 31-1-11.5-27 before its repeal), or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty (60) days.

(c) If a petition is filed under this section, a court shall appoint a guardian ad litem (as defined in ~~IC 31-9-2-51~~ **IC 31-9-2-50**) or a court appointed special advocate (as defined in IC 31-9-2-29) for the child.

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A guardian ad litem or court appointed special advocate appointed under this section serves until removed by the court.

(d) If a temporary guardian is appointed without notice and the minor files a petition that the guardianship be terminated or the court order modified, the court shall hold a hearing and make a determination on the petition at the earliest possible time.

(e) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

(g) The court shall appoint a guardian under this article if the court finds that the surviving parent is not entitled to the right of custody of the minor.

SECTION 8. IC 31-9-2-88.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 88.5. "Parenting time" means the time set aside by a court order for a parent and child to spend together.**

SECTION 9. IC 31-12-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. A domestic relations counselor shall, when directed by the judge of any domestic relations court, perform the following duties in domestic relations cases and such other duties as the judge of the domestic relations court assigns to the counselor:

(1) The domestic relations counselor shall promptly receive all requests for counseling services for the purpose of disposing of the requests under this chapter.

(2) Whenever a petition is filed and either party requests counseling, the domestic relations counselor shall, in the counselor's discretion:

(A) interview and counsel each plaintiff and, if feasible and desirable, each defendant; or

(B) confer with both jointly;

for the purpose of reconciling the differences between the parties and making recommendations to the judge of the domestic relations court.

(3) In each case assigned to the domestic relations court in which the custody, support, or welfare of a child is involved, in order to protect and conserve the interest of the child, the domestic relations counselor shall investigate and report upon:

(A) the status and condition of the parties to the cause;

(B) the status and condition of the child;

(C) the provisions made or to be made for the protection of the

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welfare of the child; and

(D) any other matter pertaining to the marriage that may affect the welfare of the child.

(4) Upon request of the domestic relations court judge, the counselor shall:

(A) make post-dissolution studies of problems arising in connection with child custody, support, and ~~visitation~~; **parenting time;**

(B) provide assistance to the parties in the enforcement of support orders; and

(C) cause reports to be made and statistics to be compiled, which records and reports shall be kept as the judge of the domestic relations court may direct.

(5) The counselor shall provide such supervision in connection with the exercise of the jurisdiction of the domestic relations court as the judge may order.

SECTION 10. IC 31-12-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. The domestic relations counseling bureau shall perform the following duties in domestic relations cases and such other duties as the judges described in section 1(1) of this chapter, the judge described in section 1(2) of this chapter, or a magistrate assigns to the domestic relations counseling bureau:

(1) The domestic relations counseling bureau shall promptly receive all requests for counseling services for the purpose of disposing of the requests under this chapter.

(2) Whenever a proceeding is initiated and either party requests counseling or mediation, the domestic relations counseling bureau shall, in the bureau's discretion, interview and counsel each party or confer with both parties jointly for the purpose of reconciling the differences between the parties and making recommendations to the judge of any court upon referral.

(3) In each case assigned to the bureau in which the custody, support, or welfare of a child is involved, to protect and conserve the interest of the child, the domestic relations counseling bureau shall investigate and report upon:

(A) the status and condition of the parties to the cause;

(B) the status and condition of the child;

(C) the provisions made or to be made for the protection of the welfare of the child; and

(D) any other matter pertaining to the marriage that may affect the welfare of the child.

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(4) Upon order of the judges described in section 1(1) of this chapter or the judge described in section 1(2) of this chapter, the domestic relations counseling bureau shall:

(A) make post-divorce studies of problems arising in connection with child custody, support, and ~~visitation~~; **parenting time**;

(B) provide assistance to the parties in the enforcement of support orders; and

(C) cause reports to be made and statistics to be compiled, which records and reports shall be kept as the judges described in section 1(1) of this chapter or the judge described in section 1(2) of this chapter directs.

(5) The domestic relations counseling bureau shall provide supervision in connection with referred cases or other cases as the judges described in section 1(1) of this chapter or the judge described in section 1(2) of this chapter may order.

SECTION 11. IC 31-14-1.5-1, AS ADDED BY P.L.171-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A bond required under this article to secure the obligation of child support, enforcement of a custody order, or enforcement of a ~~visitation~~ **parenting time** order must:

(1) be in writing; and

(2) be secured by:

(A) at least one (1) resident freehold surety; or

(B) a commercial insurance company.

SECTION 12. IC 31-14-1.5-2, AS ADDED BY P.L.171-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
COUNTY OF _____)

IN THE MATTER OF:

Name of Parent (As the Principal)

Name of Parent (As the Obligee)



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CHILD:

Name of Child

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto _____, as Oblige, in the penal sum of _____ Dollars (\$ _____), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above Court in the State of Indiana, County of _____, dated _____, defining custody, ~~visitation~~, **parenting time**, and support rights regarding the named children.

NOW THEREFORE, the conditions of this obligation are such that:

1. No right of action on this bond shall be granted for the use or benefit of any individual, partnership, corporation, or other entity, other than the named Oblige.
2. It is agreed that neither this bond nor the obligation of this bond, nor any interest in this bond, may be assigned without the prior express written consent of the Surety.
3. Payment under this bond shall be conditioned upon the Oblige's, or the representative of the Oblige's, filing a motion with the court seeking a declaration of forfeiture of the bond and the Court's finding and entry of a final judgment ordering the Principal and Surety to make such payment. A certified copy of the filing shall be provided to the Surety at its address of record. The Surety shall make payment within thirty (30) days of receiving notification of the final judgment directly to a Trustee appointed by the Court who shall administer the funds in a fiduciary capacity.
4. The Surety shall not be liable hereunder for any amount larger than the face amount of this bond.
5. This bond and the obligation hereunder shall terminate and be of no further effect if the Court order requiring it is modified in any way without the Surety's consent, **the Court order** expires, or this cause is removed to another jurisdiction.
6. The Surety may file a motion with the Court for discharge of this bond and its obligation hereunder for any good cause. Good cause includes, but is not limited to, misrepresentation or fraud in the initial application for this bond, nonpayment

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of premium, loss of collateral, or resignation of the Indemnitor. The Surety shall give notice of any such motion to the Obligee.

NOW THEREFORE, if the Principal faithfully complies with the requirements and conditions of the Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20 ____.

Principal: Surety:

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)

(Countersigned by attorney-in-fact)

(Surety seal)

Witness:

SECTION 13. IC 31-14-1.5-3, AS ADDED BY P.L.171-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a ~~visitation~~ **parenting time** order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order, if the security, bond, or guarantee covers custody or ~~visitation~~, **parenting time**, or both; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

SECTION 14. IC 31-14-1.5-4, AS ADDED BY P.L.171-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure the obligation of child support, enforcement of a custody order, or enforcement of a ~~visitation~~ **parenting time** order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

SECTION 15. IC 31-14-10-1 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. Upon finding that a
 2 man is the child's biological father, the court shall, in the initial
 3 determination, conduct a hearing to determine the issues of support,
 4 custody, and ~~visitation~~ **parenting time**. Upon the request of any party
 5 or on the court's own motion, the court may order a probation officer or
 6 caseworker to prepare a report to assist the court in determining these
 7 matters.

8 SECTION 16. IC 31-14-10-3 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. The court may make
 10 findings and orders without holding the hearing required by section 1
 11 of this chapter if:

12 (1) the mother and the alleged father execute and file with the
 13 court a verified written stipulation; or

14 (2) the parties have filed a joint petition;

15 resolving the issues of custody, child support, and ~~visitation~~ **parenting**
 16 **time**. The court shall incorporate provisions of the written stipulation
 17 or joint petition into orders entered under this section.

18 SECTION 17. IC 31-14-13-5 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. The court may order
 20 the probation department, the county office of family and children, or
 21 any licensed child placing agency to supervise the placement to ensure
 22 that the custodial or ~~visitation~~ **parenting time** terms of the decree are
 23 carried out if:

24 (1) both parents or the child request supervision; or

25 (2) the court finds that without supervision the child's physical
 26 health and well-being would be endangered or the child's
 27 emotional development would be significantly impaired.

28 SECTION 18. IC 31-14-13-6.7, AS ADDED BY P.L.171-2001,
 29 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2004]: Sec. 6.7. (a) The court shall consider requiring
 31 security, a bond, or another guarantee under section 6.5 of this chapter
 32 if the court makes a finding under subdivision (1), (2), (4), or (7) by
 33 clear and convincing evidence. If the court makes a finding under
 34 ~~subdivisions~~ **subdivision** (1), (2), (4), or (7), the court shall also
 35 consider subdivisions (3), (5), (6), (8), and (9) in determining the
 36 amount of security, bond, or other guarantee. In making a
 37 determination under this section, the court shall consider the following:

38 (1) Whether a party has previously taken a child out of Indiana or
 39 another state in violation of a custody, **parenting time**, or
 40 visitation order.

41 (2) Whether a party has previously threatened to take a child out
 42 of Indiana or another state in violation of a custody, **parenting**

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time, or visitation order.

(3) Whether a party has strong ties to Indiana.

(4) Whether a party:

(A) is a citizen of another country;

(B) has strong emotional or cultural ties to the other country;
and

(C) has indicated or threatened to take a child out of Indiana
to the other country.

(5) Whether a party has friends or family living outside Indiana.

(6) Whether a party does not have a financial reason to stay in
Indiana, such as whether the party is unemployed, able to work
anywhere, or is financially independent.

(7) Whether a party has engaged in planning that would facilitate
removal from Indiana, such as quitting a job, selling the party's
primary residence, terminating a lease, closing an account,
liquidating other assets, hiding or destroying documents, applying
for a passport, applying for a birth certificate, or applying for
school or medical records.

(8) Whether a party has a history of marital instability, a lack of
parental cooperation, domestic violence, or child abuse.

(9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written
determination of security, bond, or other written guarantee supported
by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the
court may, before a determination of change of judge or change of
venue, consider security, bond, or other guarantee under this chapter.

SECTION 19. IC 31-14-14-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A noncustodial
parent is entitled to reasonable ~~visitation~~ **parenting time** rights unless
the court finds, after a hearing, that ~~visitation~~ **parenting time** might:

(1) endanger the child's physical health and well-being; or

(2) significantly impair the child's emotional development.

SECTION 20. IC 31-14-14-2 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The court may
modify an order granting or denying ~~visitation~~ **parenting time** rights
whenever modification would serve the best interests of the child.

SECTION 21. IC 31-14-14-2.5, AS ADDED BY P.L.171-2001,
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2004]: Sec. 2.5. The court may provide in:

(1) a ~~visitation~~ **parenting time** order; or

(2) a modification of a ~~visitation~~ **parenting time** order;

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for the security, bond, or other guarantee that is satisfactory to secure enforcement of the ~~visitation~~ **parenting time** order.

SECTION 22. IC 31-14-14-4, AS AMENDED BY P.L.2-2003, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. A noncustodial parent who misses ~~visitation~~ **parenting time** as the result of participation in an activity of:

(1) the Indiana National Guard; or

(2) a reserve component of the armed forces of the United States; may make up the lost ~~visitation~~ **parenting time** as provided in IC 10-16-7-22.

SECTION 23. IC 31-14-14-5, AS AMENDED BY P.L.133-2002, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child.

(b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's ~~visitation~~ **parenting time** with the child must be supervised:

(1) for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or

(2) until the child becomes emancipated; whichever occurs first.

SECTION 24. IC 31-14-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A noncustodial parent who:

(1) has been granted ~~visitation~~ **parenting time** rights with a child who lives with the custodial parent;

(2) regularly pays support ordered by a court for the child; and

(3) is barred by a custodial parent from exercising ~~visitation~~ **parenting time** rights ordered for the noncustodial parent and the child;

may file, in the court that has jurisdiction over the paternity action, an application for a permanent injunction against the custodial parent under Rule 65 of the Indiana Rules of Trial Procedure.

SECTION 25. IC 31-14-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) If:

(1) an application for an injunction is filed under this chapter (or IC 31-6-6.1-12.1 before its repeal); and

(2) the noncustodial parent submits an affidavit as described in subsection (b);

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the court may grant, without notice, a temporary restraining order restraining the custodial parent from further violation of the ~~visitation~~ **parenting time** order.

(b) In the affidavit, the noncustodial parent shall state under penalties for perjury:

(1) that the noncustodial parent has been granted ~~visitation~~ **parenting time** rights with the child; and

(2) that the noncustodial parent regularly pays the support ordered by a court for the child.

(c) The court shall hold a hearing upon the restraining order at the earliest convenience of the court.

SECTION 26. IC 31-14-15-4, AS AMENDED BY P.L.32-2000, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. A court that finds a violation without justifiable cause by a custodial parent of an injunction or a temporary restraining order issued under this chapter (or IC 31-6-6.1-12.1 before its repeal):

(1) shall find the custodial parent in contempt of court;

(2) shall order the exercise of ~~visitation~~ **parenting time** that was not exercised due to the violation under this section (or IC 31-6-6.1-12.1(e) before its repeal) at a time the court considers compatible with the schedules of the noncustodial parent and the child;

(3) may order payment by the custodial parent of reasonable attorney's fees, costs, and expenses to the noncustodial parent; and

(4) may order the custodial parent to perform community restitution or service without compensation in a manner specified by the court.

SECTION 27. IC 31-15-4-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. The filing by either party of a motion for change of venue or change from the judge during the period before the court makes a determination under section 6 of this chapter does not divest the court of jurisdiction to:

(1) hear evidence upon the petition;

(2) set an amount of temporary child support;

(3) determine temporary custody; or

(4) order appropriate ~~visitation~~ **parenting time**.

SECTION 28. IC 31-15-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. If the court grants a change of venue or change from the judge after the preliminary order of support, custody, or ~~visitation~~ **parenting time** is issued, either party may:

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- (1) file a petition for a subsequent preliminary hearing on the issue of temporary child support, temporary custody, or ~~visitation~~; **parenting time**;
- (2) seek relief from the original order; and
- (3) request that the court conduct a hearing relating to any other temporary order available under this article.

SECTION 29. IC 31-15-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. The court may order a guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) to exercise continuing supervision over the child to assure that the custodial or ~~visitation~~ **parenting time** terms of an order entered by the court under this article (or IC 31-1-11.5 before its repeal) are carried out as required by the court.

SECTION 30. IC 31-16-3.5-2, AS ADDED BY P.L.171-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
 COUNTY OF _____)
)
)
 IN THE MATTER OF:
)
)
 Name of Parent (As the Principal)
)
 Name of Parent (As the Oblige))
)
)
 CHILD:
)
 Name of Child
)

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto _____, as Oblige, in the penal sum of _____ Dollars (\$ _____), for the payment of which well and truly to be made we hereby bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, an Order was duly made and entered by the above



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1 Court in the State of Indiana, County of _____, dated _____, defining
 2 custody, ~~visitation~~, **parenting time**, and support rights regarding the
 3 named children.

4 NOW THEREFORE, the conditions of this obligation are such that:

- 5 1. No right of action on this bond shall be granted for the use
 6 or benefit of any individual, partnership, corporation, or
 7 other entity, other than the named Obligee.
- 8 2. It is agreed that neither this bond nor the obligation of this
 9 bond, nor any interest in this bond, may be assigned without
 10 the prior express written consent of the Surety.
- 11 3. Payment under this bond shall be conditioned upon the
 12 Obligee's, or the representative of the Obligee's, filing a
 13 motion with the court seeking a declaration of forfeiture of
 14 the bond and the Court's finding and entry of a final
 15 judgment ordering the Principal and Surety to make such
 16 payment. A certified copy of the filing shall be provided to
 17 the Surety at its address of record. The Surety shall make
 18 payment within thirty (30) days of receiving notification of
 19 the final judgment directly to a Trustee appointed by the
 20 Court who shall administer the funds in a fiduciary capacity.
- 21 4. The Surety shall not be liable hereunder for any amount
 22 larger than the face amount of this bond.
- 23 5. This bond and the obligation hereunder shall terminate and
 24 be of no further effect if the Court order requiring it is
 25 modified in any way without the Surety's consent, **the Court**
 26 **order** expires, or this cause is removed to another
 27 jurisdiction.
- 28 6. The Surety may file a motion with the Court for discharge of
 29 this bond and its obligation hereunder for any good cause.
 30 Good cause includes, but is not limited to, misrepresentation
 31 or fraud in the initial application for this bond, nonpayment
 32 of premium, loss of collateral, or resignation of the
 33 Indemnitor. The Surety shall give notice of any such motion
 34 to the Obligee.

35 NOW THEREFORE, if the Principal faithfully complies with the
 36 requirements and conditions of the Court Order within the limitations
 37 and parameters set forth therein, then this Obligation shall be void,
 38 otherwise it shall remain in full force and effect.

39 In witness whereof, each party to this bond has caused it to be
 40 executed at the place and on the date indicated below.

41 Signed, sealed and dated on this _____ day of _____, 20____.

42 Principal: Surety:

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1 _____
 2 (Name and address of Principal)
 3 (Name and address of Surety)
 4 _____
 5 (Signature of Principal)
 6 (Countersigned by attorney-in-fact)
 7 (Surety seal)
 8 Witness:
 9 SECTION 31. IC 31-16-3.5-3, AS ADDED BY P.L.171-2001,
 10 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2004]: Sec. 3. Upon forfeiture, the proceeds of security, a
 12 bond, or other guarantee ordered to secure the obligation of child
 13 support, enforcement of a custody order, or enforcement of a ~~visitation~~
 14 **parenting time** order under this article may only be used to:
 15 (1) reimburse the nonviolating party for actual costs or damages
 16 incurred in upholding the court's order;
 17 (2) locate and return the child to the residence as set forth in the
 18 court's order, if the security, bond, or guarantee covers custody or
 19 ~~visitation~~, **parenting time**, or both; or
 20 (3) reimburse reasonable fees and court costs to the court
 21 appointed trustee.
 22 SECTION 32. IC 31-17-2-8.3, AS ADDED BY P.L.133-2002,
 23 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2004]: Sec. 8.3. (a) This section applies if a court finds that a
 25 noncustodial parent has been convicted of a crime involving domestic
 26 or family violence that was witnessed or heard by the noncustodial
 27 parent's child.
 28 (b) There is created a rebuttable presumption that the court shall
 29 order that the noncustodial parent's ~~visitation~~ **parenting time** with the
 30 child must be supervised:
 31 (1) for at least one (1) year and not more than two (2) years
 32 immediately following the crime involving domestic or family
 33 violence; or
 34 (2) until the child becomes emancipated;
 35 whichever occurs first.
 36 SECTION 33. IC 31-17-2-11 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) If, in a
 38 proceeding for custody or modification of custody under IC 31-15, this
 39 chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7, the court:
 40 (1) requires supervision during the noncustodial parent's ~~visitation~~
 41 **parenting time** privileges; or
 42 (2) suspends the noncustodial parent's ~~visitation~~ **parenting time**

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1 privileges;
2 the court shall enter a conditional order naming a temporary custodian
3 for the child.

4 (b) A temporary custodian named by the court under this section
5 receives temporary custody of a child upon the death of the child's
6 custodial parent.

7 (c) Upon the death of a custodial parent, a temporary custodian
8 named by a court under this section may petition the court having
9 probate jurisdiction over the estate of the child's custodial parent for an
10 order under IC 29-3-3-6 naming the temporary custodian as the
11 temporary guardian of the child.

12 SECTION 34. IC 31-17-2-18 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. If both parents or
14 all contestants agree to the order or if the court finds that, in the
15 absence of the order, the child's physical health might be endangered
16 or the child's emotional development significantly impaired, the court
17 may order:

- 18 (1) the court social service agency;
- 19 (2) the staff of the juvenile court;
- 20 (3) the local probation department;
- 21 (4) the county office of family and children; or
- 22 (5) a private agency employed by the court for that purpose;

23 to exercise continuing supervision over the case to assure that the
24 custodial or ~~visitation~~ **parenting time** terms of the decree are carried
25 out.

26 SECTION 35. IC 31-17-2-21.7, AS ADDED BY P.L.171-2001,
27 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2004]: Sec. 21.7. (a) The court shall consider requiring
29 security, a bond, or another guarantee under section 21.5 of this chapter
30 if the court makes a finding under subdivision (1), (2), (4), or (7) by
31 clear and convincing evidence. If the court makes a finding under
32 subdivision (1), (2), (4), or (7), the court shall also consider
33 subdivisions (3), (5), (6), (8), and (9) in determining the amount of
34 security, bond, or other guarantee. In making a determination under this
35 section, the court shall consider the following:

- 36 (1) Whether a party has previously taken a child out of Indiana or
37 another state in violation of a custody, **parenting time**, or
38 visitation order.
- 39 (2) Whether a party has previously threatened to take a child out
40 of Indiana or another state in violation of a custody, **parenting**
41 **time**, or visitation order.
- 42 (3) Whether a party has strong ties to Indiana.



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(4) Whether a party:

(A) is a citizen of another country;

(B) has strong emotional or cultural ties to the other country;
and

(C) has indicated or threatened to take a child out of Indiana
to the other country.

(5) Whether a party has friends or family living outside Indiana.

(6) Whether a party does not have a financial reason to stay in
Indiana, such as whether the party is unemployed, able to work
anywhere, or is financially independent.

(7) Whether a party has engaged in planning that would facilitate
removal from Indiana, such as quitting a job, selling the party's
primary residence, terminating a lease, closing an account,
liquidating other assets, hiding or destroying documents, applying
for a passport, applying for a birth certificate, or applying for
school or medical records.

(8) Whether a party has a history of marital instability, a lack of
parental cooperation, domestic violence, or child abuse.

(9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written
determination of security, bond, or other written guarantee supported
by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the
court may, before a determination of change of judge or change of
venue, consider security, bond, or other guarantee under this chapter.

SECTION 36. IC 31-17-2-23, AS AMENDED BY P.L.96-1999,
SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2004]: Sec. 23. (a) If an individual who has been awarded
custody of a child under this chapter intends to move to a residence:

(1) other than a residence specified in the custody order; and

(2) that is outside Indiana or at least one hundred (100) miles
from the individual's county of residence;

the individual must file a notice of the intent to move with the clerk of
the court that issued the custody order and send a copy of the notice to
a parent who was not awarded custody and who has been granted
~~visitation~~ **parenting time** rights under IC 31-17-4 (or IC 31-1-11.5-24
before its repeal).

(b) Upon request of either party, the court shall set the matter for a
hearing for the purposes of reviewing and modifying, if appropriate, the
custody, ~~visitation~~, **parenting time**, and support orders. The court shall
take into account the following in determining whether to modify the
custody, ~~visitation~~, **parenting time**, and support orders:

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(1) The distance involved in the proposed change of residence.

(2) The hardship and expense involved for noncustodial parents to exercise ~~visitation~~ **parenting time** rights.

(c) Except in cases of extreme hardship, the court may not award attorney's fees.

SECTION 37. IC 31-17-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Definitions. As used in this chapter:

(1) "contestant" means a person, including a parent, who claims a right to custody, or ~~visitation~~ **parenting time** rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including ~~visitation~~ **parenting time** rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, but does not include child in need of services proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United

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States, the Commonwealth of Puerto Rico, and the District of Columbia.

SECTION 38. IC 31-17-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. Denial of Jurisdiction. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a ~~visit~~ **parenting time** or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

SECTION 39. IC 31-17-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) Every party in a custody proceeding, other than an action for dissolution of marriage, in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

- (1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
- (2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and
- (3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody, or ~~visitation~~ **parenting time** rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters

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pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

SECTION 40. IC 31-17-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. Additional Parties. If the court learns from information furnished by the parties pursuant to section 9 of this chapter or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody, or ~~visitation~~ **parenting time** rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with section 5 of this chapter.

SECTION 41. IC 31-17-3.5-1, AS ADDED BY P.L.171-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A bond required under this article to secure enforcement of a custody order or ~~visitation~~ **parenting time** order must:

(1) be in writing; and

(2) be secured by:

(A) at least one (1) resident freehold surety; or

(B) a commercial insurance company.

SECTION 42. IC 31-17-3.5-2, AS ADDED BY P.L.171-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A bond described in section 1 of this chapter may be prepared in substantially the following form:

STATE OF INDIANA)
) SS:
COUNTY OF _____)

IN THE MATTER OF:

Name of Parent (As the Principal)

Name of Parent (As the Obligee)

CHILD:

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1)
 2 Name of Child
 3)

4 KNOW ALL MEN BY THESE PRESENTS, that we _____, as
 5 Principal, and _____, as Surety, are held and firmly bound unto _____,
 6 as Oblige, in the penal sum of _____ Dollars (\$ _____), for the payment
 7 of which well and truly to be made we hereby bind ourselves and our
 8 heirs, administrators, successors, and assigns, jointly and severally,
 9 firmly by these presents.

10 WHEREAS, an Order was duly made and entered by the above
 11 Court in the State of Indiana, County of _____, dated _____, defining
 12 custody, ~~visitation~~, **parenting time**, and support rights regarding the
 13 named children.

14 NOW THEREFORE, the conditions of this obligation are such that:

- 15 1. No right of action on this bond shall be granted for the use
 16 or benefit of any individual, partnership, corporation, or
 17 other entity, other than the named Oblige.
- 18 2. It is agreed that neither this bond nor the obligation of this
 19 bond, nor any interest in this bond, may be assigned without
 20 the prior express written consent of the Surety.
- 21 3. Payment under this bond shall be conditioned upon the
 22 Oblige's, or the representative of the Oblige's, filing a
 23 motion with the court seeking a declaration of forfeiture of
 24 the bond and the Court's finding and entry of a final
 25 judgment ordering the Principal and Surety to make such
 26 payment. A certified copy of the filing shall be provided to
 27 the Surety at its address of record. The Surety shall make
 28 payment within thirty (30) days of receiving notification of
 29 the final judgment directly to a Trustee appointed by the
 30 Court who shall administer the funds in a fiduciary capacity.
- 31 4. The Surety shall not be liable hereunder for any amount
 32 larger than the face amount of this bond.
- 33 5. This bond and the obligation hereunder shall terminate and
 34 be of no further effect if the Court order requiring it is
 35 modified in any way without the Surety's consent, **the Court**
 36 **order** expires, or this cause is removed to another
 37 jurisdiction.
- 38 6. The Surety may file a motion with the Court for discharge of
 39 this bond and its obligation hereunder for any good cause.
 40 Good cause includes, but is not limited to, misrepresentation
 41 or fraud in the initial application for this bond, nonpayment
 42 of premium, loss of collateral, or resignation of the

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Indemnitor. The Surety shall give notice of any such motion to the Oblige.

NOW THEREFORE, if said Principal shall faithfully comply with the requirements and conditions of said Court Order within the limitations and parameters set forth therein, then this Obligation shall be void, otherwise it shall remain in full force and effect.

In witness whereof, each party to this bond has caused it to be executed at the place and on the date indicated below.

Signed, sealed and dated on this ____ day of ____, 20__.

Principal: Surety:

(Name and address of Principal)

(Name and address of Surety)

(Signature of Principal)
(Countersigned by attorney-in-fact)
(Surety seal)

Witness:

SECTION 43. IC 31-17-3.5-3, AS ADDED BY P.L.171-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. Upon forfeiture, the proceeds of security, a bond, or other guarantee ordered to secure enforcement of a custody order or **visitation parenting time** order under this article may only be used to:

- (1) reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order;
- (2) locate and return the child to the residence as set forth in the court's order; or
- (3) reimburse reasonable fees and court costs to the court appointed trustee.

SECTION 44. IC 31-17-3.5-4, AS ADDED BY P.L.171-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. Upon forfeiture, the proceeds of the security, a bond, or other guarantee ordered to secure enforcement of a custody order or **visitation parenting time** order under this article that are not applied to the expenses described in section 3 of this chapter must be applied toward:

- (1) the child's higher education; or
- (2) the support and maintenance of the child.

SECTION 45. IC 31-17-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. A parent not granted custody of the child is entitled to reasonable **visitation parenting time**

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rights unless the court finds, after a hearing, that ~~visitation~~ **parenting time** by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

SECTION 46. IC 31-17-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The court may modify an order granting or denying ~~visitation~~ **parenting time** rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's ~~visitation~~ **parenting time** rights unless the court finds that the ~~visitation~~ **parenting time** might endanger the child's physical health or significantly impair the child's emotional development.

SECTION 47. IC 31-17-4-2.5, AS ADDED BY P.L.171-2001, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2.5. The court may provide in:

- (1) a ~~visitation~~ **parenting time** order; or
- (2) a modification to a ~~visitation~~ **parenting time** order; for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the provisions of the ~~visitation~~ **parenting time** order.

SECTION 48. IC 31-17-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) In any action filed to enforce or modify an order granting or denying ~~visitation~~ **parenting time** rights, a court may award:

- (1) reasonable attorney's fees;
 - (2) court costs; and
 - (3) other reasonable expenses of litigation.
- (b) In determining whether to award reasonable attorney's fees, court costs, and other reasonable expenses of litigation, the court may consider among other factors:
- (1) whether the petitioner substantially prevailed and whether the court found that the respondent knowingly or intentionally violated an order granting or denying rights; and
 - (2) whether the respondent substantially prevailed and the court found that the action was frivolous or vexatious.

SECTION 49. IC 31-17-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. A noncustodial parent who:

- (1) has been granted ~~visitation~~ **parenting time** rights with a child who lives with the custodial parent;
- (2) regularly pays support ordered by a court for the child; and
- (3) is barred by a custodial parent from exercising ~~visitation~~ **parenting time** rights ordered for the noncustodial parent and the

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child;
 may file, in the court that has jurisdiction over the dissolution of marriage, an application for a permanent injunction against the custodial parent under Rule 65 of the Indiana Rules of Trial Procedure.

SECTION 50. IC 31-17-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If an application for an injunction has been filed under section 4 of this chapter (or IC 31-1-11.5-26 before its repeal), the court may grant, without notice, upon affidavit of the noncustodial parent, a temporary restraining order restraining the custodial parent from further violation of the ~~visitation~~ **parenting time** order.

(b) In the affidavit, the noncustodial parent must state under penalties for perjury that:

- (1) the noncustodial parent has been granted ~~visitation~~ **parenting time** rights with the child; and
- (2) the noncustodial parent regularly pays the support ordered by a court for the child.

SECTION 51. IC 31-17-4-8, AS AMENDED BY P.L.32-2000, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. A court that finds an intentional violation without justifiable cause by a custodial parent of an injunction or a temporary restraining order issued under this chapter (or IC 31-1-11.5-26 before its repeal):

- (1) shall find the custodial parent in contempt of court;
- (2) shall order the exercise of ~~visitation~~ **parenting time** that was not exercised due to the violation under this section at a time the court considers compatible with the schedules of the noncustodial parent and the child;
- (3) may order payment by the custodial parent of reasonable attorney's fees, costs, and expenses to the noncustodial parent; and
- (4) may order the custodial parent to perform community restitution or service without compensation in a manner specified by the court.

SECTION 52. IC 31-17-4-10, AS AMENDED BY P.L.2-2003, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. A noncustodial parent who misses ~~visitation~~ **parenting time** as the result of participation in an activity of:

- (1) the Indiana National Guard; or
 - (2) a reserve component of the armed forces of the United States;
- may make up the lost ~~visitation~~ **parenting time** as provided in IC 10-16-7-22.

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SECTION 53. IC 31-17-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. The court may order a guardian ad litem or court appointed special advocate appointed by a court under this chapter (or IC 31-1-11.5-28 before its repeal) to exercise continuing supervision over the child to assure that the custodial or ~~visitation~~ **parenting time** terms of an order entered by the court under IC 31-17-2 or IC 31-17-4 (or IC 31-1-11.5 before its repeal) are carried out as required by the court.

SECTION 54. IC 31-18-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) When a responding Indiana tribunal receives a petition or comparable pleading from an initiating tribunal or directly under section 1(c) of this chapter, the responding tribunal shall:

(1) file the petition or pleading; and

(2) notify the petitioner by first class mail of the location and date that the petition or comparable pleading was filed.

(b) A responding Indiana tribunal, to the extent otherwise authorized by law, may do one (1) or more of the following:

(1) Issue or enforce a support order, modify a child support order, or enter a judgment to establish paternity.

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance.

(3) Order income withholding.

(4) Determine the amount of any arrearages and specify a method of payment.

(5) Enforce orders by civil or criminal contempt, or both.

(6) Set aside property for satisfaction of the support order.

(7) Place liens and order execution on the obligor's property.

(8) Order an obligor to keep a tribunal informed of the obligor's current:

(A) residential address;

(B) telephone number;

(C) income payor;

(D) address of employment; and

(E) telephone number at the place of employment.

(9) Issue a bench warrant or body attachment for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal, and enter the bench warrant in any local and state computer systems for criminal warrants.

(10) Order the obligor to seek appropriate employment by specified methods.

(11) Award reasonable attorney's fees and other fees and costs.

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(12) As appropriate, grant any other available remedy under federal or state law.

(c) A responding Indiana tribunal shall include in:

(1) a support order issued under this article; or

(2) the documents accompanying the order;

the calculations upon which the support order is based.

(d) A responding Indiana tribunal may not condition the payment of a support order issued under this article upon a party's compliance with provisions for ~~visitation~~ **parenting time**.

(e) If a responding Indiana tribunal issues an order under this article, the Indiana tribunal shall send a copy of the order by first class mail to the:

(1) petitioner;

(2) respondent; and

(3) initiating tribunal, if any.

SECTION 55. IC 31-18-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Nothing in this chapter shall be construed to confer jurisdiction on the court to determine issues of custody, ~~visitation~~, **parenting time**, or the surname of a child. However, the parties may stipulate to the jurisdiction of the court with regard to custody, ~~visitation~~, **parenting time**, or the surname of a child.

SECTION 56. IC 31-35-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. For purposes of sections 6 and 8 of this chapter, the parents must be advised that:

(1) their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress or unless the parent is incompetent;

(2) when the court terminates the parent-child relationship:

(A) all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, ~~visitation~~, **parenting time**, or support pertaining to the relationship, are permanently terminated; and

(B) their consent to the child's adoption is not required;

(3) the parents have a right to the:

(A) care;

(B) custody; and

(C) control;

of their child as long as the parents fulfill their parental obligations;

(4) the parents have a right to a judicial determination of any alleged failure to fulfill their parental obligations in a proceeding

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to adjudicate their child a delinquent child or a child in need of services;

(5) the parents have a right to assistance in fulfilling their parental obligations after a court has determined that the parents are not doing so;

(6) proceedings to terminate the parent-child relationship against the will of the parents can be initiated only after:

(A) the child has been adjudicated a delinquent child or a child in need of services and removed from their custody following the adjudication; or

(B) a parent has been convicted and imprisoned for an offense listed in IC 31-35-3-4 (or has been convicted and imprisoned for an offense listed in IC 31-6-5-4.2(a) before its repeal), the child has been removed from the custody of the parents under a dispositional decree, and the child has been removed from the custody of the parents for six (6) months under a court order;

(7) the parents are entitled to representation by counsel, provided by the state if necessary, throughout any proceedings to terminate the parent-child relationship against the will of the parents; and

(8) the parents will receive notice of the hearing at which the court will decide if their consent was voluntary, and the parents may appear at the hearing and allege that the consent was not voluntary.

SECTION 57. IC 31-35-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) If the juvenile or probate court terminates the parent-child relationship:

(1) all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, ~~visitation~~, **parenting time**, or support, pertaining to the relationship, are permanently terminated; and

(2) the parent's consent to the child's adoption is not required.

(b) Any support obligations that accrued before the termination are not affected. However, the support payments shall be made under the juvenile or probate court's order.

SECTION 58. IC 34-7-4-2, AS AMENDED BY P.L.2-2002, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Statutes outside IC 34 providing causes of action or procedures include the following:

(1) IC 4-21.5-5 (Judicial review of administrative agency actions).

(2) IC 22-3-4 (Worker's compensation administration and procedures).

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- 1 (3) IC 22-4-17 (Unemployment compensation system, employee's
- 2 claims for benefits).
- 3 (4) IC 22-4-32 (Unemployment compensation system, employer's
- 4 appeal process).
- 5 (5) IC 22-9 (Civil rights actions).
- 6 (6) IC 31-14 (Paternity).
- 7 (7) IC 31-15 (Dissolution of marriage and legal separation).
- 8 (8) IC 31-16 (Support of children and other dependants).
- 9 (9) IC 31-17 (Custody and ~~visitation~~; **parenting time**).
- 10 (10) IC 31-19 (Adoption).
- 11 (11) IC 32-27-2, IC 32-30-1, IC 32-30-2, ~~IC 32-30-2.1,~~
- 12 ~~IC 32-30-2,~~ **IC 32-30-3.1**, IC 32-30-4, IC 32-30-9, IC 32-30-10,
- 13 IC 32-30-12, IC 32-30-13, and IC 32-30-14 (Real Property).
- 14 (12) IC 33-1-3 (Attorney Liens).

15 SECTION 59. IC 34-26-5-9, AS ADDED BY P.L.133-2002,
 16 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2004]: Sec. 9. (a) If it appears from a petition for an order for
 18 protection or from a petition to modify an order for protection that
 19 domestic or family violence has occurred or that a modification of an
 20 order for protection is required, a court may:

- 21 (1) without notice or hearing, immediately issue an order for
- 22 protection ex parte or modify an order for protection ex parte; or
- 23 (2) upon notice and after a hearing, whether or not a respondent
- 24 appears, issue or modify an order for protection.

25 (b) A court may grant the following relief without notice and
 26 hearing in an ex parte order for protection or in an ex parte order for
 27 protection modification:

- 28 (1) Enjoin a respondent from threatening to commit or
- 29 committing acts of domestic or family violence against a
- 30 petitioner and each designated family or household member.
- 31 (2) Prohibit a respondent from harassing, annoying, telephoning,
- 32 contacting, or directly or indirectly communicating with a
- 33 petitioner.
- 34 (3) Remove and exclude a respondent from the residence of a
- 35 petitioner, regardless of ownership of the residence.
- 36 (4) Order a respondent to stay away from the residence, school, or
- 37 place of employment of a petitioner or a specified place
- 38 frequented by a petitioner and each designated family or
- 39 household member.
- 40 (5) Order possession and use of the residence, an automobile, and
- 41 other essential personal effects, regardless of the ownership of the
- 42 residence, automobile, and essential personal effects. If

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possession is ordered under this subdivision, the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:

(A) ensure that a petitioner is safely restored to possession of the residence, automobile, and other essential personal effects; or

(B) supervise a petitioner's or respondent's removal of personal belongings.

(6) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.

(c) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (b).

(2) Specify arrangements for ~~visitation~~ **parenting time** of a minor child by a respondent and:

(A) require supervision by a third party; or

(B) deny ~~visitation~~; **parenting time**;

if necessary to protect the safety of a petitioner or child.

(3) Order a respondent to:

(A) pay attorney's fees;

(B) pay rent or make payment on a mortgage on a petitioner's residence;

(C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;

(D) reimburse a petitioner or other person for expenses related to the domestic or family violence, including:

(i) medical expenses;

(ii) counseling;

(iii) shelter; and

(iv) repair or replacement of damaged property; or

(E) pay the costs and fees incurred by a petitioner in bringing the action.

(4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.

An order issued under subdivision (4) does not apply to a person who is exempt under 18 U.S.C. 925.

(d) The court shall:

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(1) cause the order for protection to be delivered to the county sheriff for service;

(2) make reasonable efforts to ensure that the order for protection is understood by a petitioner and a respondent if present;

(3) transmit, by the end of the same business day on which the order for protection is issued, a copy of the order for protection to each local law enforcement agency designated by a petitioner;

(4) transmit a copy of the order to the clerk for processing under IC 5-2-9; and

(5) notify the state police department of the order if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8).

(e) An order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.

(f) A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons:

(1) in the control, ownership, or possession of a respondent; or

(2) in the control or possession of another person on behalf of a respondent;

for the duration of the order for protection unless another date is ordered by the court.

(g) An order for custody, ~~visitation~~, **parenting time**, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

(h) The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

SECTION 60. IC 35-42-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) A person who knowingly or intentionally:

(1) removes another person who is less than eighteen (18) years of age to a place outside Indiana when the removal violates a

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1 child custody order of a court; or
 2 (2) removes another person who is less than eighteen (18) years
 3 of age to a place outside Indiana and violates a child custody
 4 order of a court by failing to return the other person to Indiana;
 5 commits interference with custody, a Class D felony. However, the
 6 offense is a Class C felony if the other person is less than fourteen (14)
 7 years of age and is not the person's child, and a Class B felony if the
 8 offense is committed while armed with a deadly weapon or results in
 9 serious bodily injury to another person.

10 (b) A person who with the intent to deprive another person of
 11 custody or ~~visitation~~ **parenting time** rights:

12 (1) knowingly or intentionally takes and conceals; or

13 (2) knowingly or intentionally detains and conceals;

14 a person who is less than eighteen (18) years of age commits
 15 interference with custody, a Class C misdemeanor. However, the
 16 offense is a Class B misdemeanor if the taking and concealment, or the
 17 detention and concealment, is in violation of a court order.

18 (c) With respect to a violation of this section, a court may consider
 19 as a mitigating circumstance the accused person's return of the other
 20 person in accordance with the child custody order within seven (7) days
 21 after the removal.

22 (d) The offenses described in this section continue as long as the
 23 child is concealed or detained, or both.

24 (e) If a person is convicted of an offense under this section, a court
 25 may impose against the defendant reasonable costs incurred by a parent
 26 or guardian of the child because of the taking, detention, or
 27 concealment of the child.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 46, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 5. IC 12-17-2-18, AS AMENDED BY P.L.138-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) The bureau shall make the agreements necessary for the effective administration of the plan with local governmental officials within Indiana. The bureau shall contract with:

- (1) a prosecuting attorney; or
- (2) a private attorney if the bureau determines that a reasonable contract cannot be entered into with a prosecuting attorney and the determination is approved by at least two-thirds (2/3) of the Indiana child custody and support advisory committee (established under IC 33-2.1-10-1);

in each judicial circuit to undertake activities required to be performed under Title IV-D of the federal Social Security Act (42 U.S.C. 651), including establishment of paternity, establishment, enforcement, and modification of child support orders, activities under the Uniform Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the contract is with a prosecuting attorney, prosecutions of welfare fraud.

(b) The hiring of an attorney by an agreement or a contract made under this section is not subject to the approval of the attorney general under IC 4-6-5-3. An agreement or a contract made under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

(c) Subject to section 18.5 of this chapter, a prosecuting attorney with which the bureau contracts under subsection (a) may contract with a private organization to provide child support enforcement services.

(d) A prosecuting attorney or private attorney entering into an agreement or a contract with the bureau under this section enters into an attorney-client relationship with the state to represent the interests of the state in the effective administration of the plan and not the interests of any other person. An attorney-client relationship is not created with any other person by reason of an agreement or contract with the bureau.

(e) At the time that an application for child support services is made, the applicant must be informed that:

- (1) an attorney who provides services for the child support bureau

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is the attorney for the state and is not providing legal representation to the applicant; and

(2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the privilege provided under IC 34-46-3-1.

(f) A prosecuting attorney or private attorney who contracts or agrees under this section to undertake activities required to be performed under Title IV-D is not required to prepare, present, or litigate a matter relating to parenting time or parenting time credit."

Page 15, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 29. IC 31-16-2-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 9. (a) In a case filed or brought by a Title IV-D agency, there is a rebuttable presumption that the noncustodial parent has an annual average of fifty-two (52) days of overnight visits as defined in the parenting time guidelines adopted by the Indiana supreme court.**

(b) Either party may present evidence to rebut the presumption described in subsection (a), or that otherwise contests the parenting time credit."

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 46 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Breaux be added as coauthor of Engrossed Senate Bill 46.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 46, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 12, delete "prepare, present" and insert "**mediate, resolve**".

Page 7, line 14, delete "31-9-2-133.5" and insert "31-9-2-88.5".

Page 7, line 16, delete "133.5." and insert "**88.5**".

Page 16, delete lines 16 through 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 46 as printed January 9, 2004.)

LAWSON L, Chair

Committee Vote: yeas 12, nays 0.

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